

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

MANNY ELLIS,

Plaintiff,

v.

PHILADELPHIA COUNTY,
COMMONWEALTH OF
PENNSYLVANIA, et al.,

Defendants.

Civil Action No. 21-298 Erie

MEMORANDUM ORDER

This *pro se* prisoner civil action was received by the Clerk of Court on October 28, 2021 and was referred to United States Magistrate Judge Richard A. Lanzillo for pretrial proceedings in accordance with the Magistrate Judges Act, 28 U.S.C. §636(b)(1), and the Local Rules for Magistrate Judges. ECF No. 1. The initiating document was styled as a “Petition for Redress of Grievance, Receiving the Bonds in the Name of the Trust, & Arbitration (Tort 42 U.S.C. §1983). *Id.* Plaintiff filed a motion for leave to proceed *in formal pauperis* the following day. ECF No. 3. Plaintiff subsequently filed a document styled as a motion for summary judgment. ECF No. 5.

On March 7, 2022, Judge Lanzillo entered an order in which he observed that Plaintiff’s operative pleading was largely incoherent but appeared to invoke the so-called “flesh and blood” movement, which courts have consistently dismissed as baseless. Because it was not clear from Plaintiff’s averments whether he intended to prosecute habeas corpus claims under 28 U.S.C. §2254 or a civil rights action for damages under 42 U.S.C. §1983, Judge Lanzillo provided Plaintiff a thirty-day period within which to file an amended pleading that would comply with federal pleading standards and sufficiently clarify his intentions in this litigation. Judge Lanzillo

then denied Plaintiff's motions without prejudice and ordered that the case be administratively closed, pending Plaintiff's filing of an amended pleading.

On March 25, 2022, Plaintiff filed a "Petition for Redress of Grievance/Arbitration" [sic], ECF No. 8, which failed to cure the deficiencies in Plaintiff's original petition and merely restated his frivolous "straw man" arguments. On March 28, 2022, after reviewing Plaintiff's amended petition, Judge Lanzillo filed a report and recommendation opining that the petition should be denied, and this civil action should be dismissed in accordance with 28 U.S.C. §1915(e) for failure to state a claim upon which relief can be granted. *See* ECF No. 9.

Objections to the R&R were due to be filed on or before April 14, 2022. To date, no objections have been filed.

Having considered the Report and Recommendation on a *de novo* basis, the Court agrees with Judge Lanzillo's conclusion that the Plaintiff's averments lack potential merit and fail as a matter of law to state a legally cognizable basis for relief. However, the Court will vacate the Magistrate Judge's prior order dismissing Plaintiff's motion for leave to proceed *in forma pauperis*. The Court will grant that motion. As Plaintiff's purported amended pleading is already filed of record, no further directives are needed in that regard.

Accordingly, after *de novo* review of the operative pleading and documents in the case, together with the Magistrate Judge's Report and Recommendation, the following order is entered:

NOW, this 11th day of May, 2022,

IT IS ORDERED that Judge Lanzillo's Order of March 7, 2022, ECF No. [7] is VACATED to the extent it denied Plaintiff's motion for leave to proceed *in forma pauperis*, filed at ECF No. [3].

IT IS FURTHER ORDERED that Plaintiff's motion for leave to proceed *in forma pauperis*, ECF No. [3], is GRANTED.

IT IS FURTHER ORDERED that Plaintiff's "Petition for Redress of Grievance/ Arbitration" [sic], ECF No. [8], is DENIED.

IT IS FURTHER ORDERED that the within civil action shall be, and hereby is, DISMISSED for failure to state a claim upon which relief can be granted in accordance with the provisions of 28 U.S.C. §1915(e). Inasmuch as the Court has no reason to believe that the deficiencies in the operative pleading can be cured through further amendment, the dismissal of this civil action is with prejudice.

Finally, IT IS ORDERED that the Report and Recommendation of Magistrate Judge Lanzillo, dated March 28, 2022, ECF No. [9], is adopted as the opinion of this Court.

There being no further pending matters before the Court, the Clerk is directed to mark this civil action "CLOSED."



SUSAN PARADISE BAXTER
United States District Judge

cm: MANNY ELLIS
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The Honorable Richard A. Lanzillo (via CM/ECF)